

JUL 22 2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re: Heinrich Lang
 Serial No.: 10/053,830
 Filed: 01/22/2002
 For: LOCKABLE REARVIEW MIRROR
 ASSEMBLY

Examiner: Shafer, Ricky D.
 Group No.: 2872
 Docket No.: LMX-69-CON
 (022946.00129RCE)

Mail Stop Appeal Brief- Patents
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

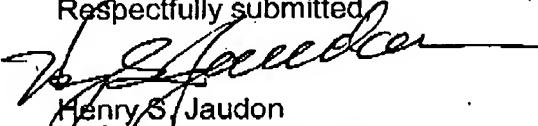
Dear Sir:

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the following papers are being facsimile transmitted to the United States Patent Office (fax number 1-571-273-8300) on the date shown below:

1. Response to PTOL-462 of 7/08/2008 Notification of Non-Compliant Appeal Brief, including **Remarks** and **Substitute Amended Appeal Brief**; and
2. Copy of Notification of Non-Compliant Appeal Brief Under 37 CFR 41.37 dated 7/08/2008.

Respectfully submitted,


 Henry S. Jaudon
 Registration No. 34,056
 McNair Law Firm, P.A.
 P.O. Box 10827
 Greenville, SC 29603-0827
 Telephone: (864) 232-4261
 Agent for the Applicant

Date: 7/22/2008

No. of Pages: 21

By: John S. McNair

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Alexandria, VA 22313-1450

Dear Sir:

Substitute Brief in Response to the
PTO Action of 7/08/2008

Remarks

The brief filed 4/08/2008 was held to be non-compliant by Examiner Shafer because Item 6 does not contain separate headings of each ground of rejection "as required" by 37 CFR 41.37 (c)(1)(vii)."

37 CFR 41.37 (c)(1)(vii): *Argument.* The contentions of appellant with respect to each ground of rejection presented for review in paragraph (c)(1)(vi) of this section, and the basis therefore, with citations of the statutes, regulations, authorities, and parts of the record relied on. Any arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown. Each ground of rejection must be treated under a separate heading. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately. Any claim argued

JUL 22 2008

separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.

Also, a correct copy of the claims is held as not presented per Item 7.

37 CFR 41.37 (c)(1)(viii): *Claims appendix*. An appendix containing a copy of the claims involved in the appeal.

A telephone interview on 7/17/2008 with Examiner Shafer was most appreciated.

The brief, as hereafter presented, is as discussed during the interview.

Respectfully submitted,



Henry S. Jaudon
Registration No. 34,056
McNair Law Firm, P.A.
P.O. Box 10827
Greenville, SC 29603-0827
Telephone: (864) 232-4261
Agent for the Applicant

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Dear Sir:

SUBSTITUTE AMENDED APPEAL BRIEF

1. *Party of Interest:*

The real party of interest is Lang Mekra North America, LLC

2. *Related Appeals and Interferences:*

There are no other appeals or interferences which affect or will be affected by the Board's decision known to Appellant.

3. *Status of Claims:*

Claims 1-17 were originally presented. The PTO action of 2/25/2003 required restriction, with claim 1 being held as a linking claim, claim 2 being grouped as I, claims 3 and 4 being grouped as II, claims 5 and 6 being grouped as III, claims 7-10 being grouped as IV and claims 11-17 being grouped as V. It is noted that allowance of claim 1 results in claims 2, 3, 4, 5 and 6 being allowed. Group IV, claims 7-10, was elected. The response of 12/04/2003 withdrew claims 2-6 and 11-17, cancelled claims 7-10 and submitted new claims 18-25. The action of 3/16/2004 held newly submitted claims 18-

24 to be directed to an invention independent and distinct from the originally claimed invention and withdrew these claims from consideration. The response of 6/01/2004 petitioned the holding of prior election set forth in the PTO action of 3/16/2004. The PTO action of 1/18/2007 held the petition arguments persuasive, withdrew the holding of prior election and presented an action on claims 1 and 18-25. Claims 1 and 18-25 were finally rejected in the PTO action of 11/16/2007 and claims 2-6 and 11-17 were held withdrawn from consideration.

Accordingly, the rejections of claims 1 and 18-25 are being appealed. Should the appeal be affirmed, claims 2-6 should be reinstated and found to also be allowable.

4. *Status of Amendments:*

All amendments have been entered.

5. *Summary of the Claimed Subject Matter:*

The invention is directed to that portion of a mirror assembly which includes the main mirror with its housing and the support arm. See page 2, lines 5-19. In the arrangement, the mirror assembly as provided is mounted to the vehicle by way of a clamping mechanism which likewise provides for simple demounting. See page 4, lines 3-8. The mirror assembly comprises a support structure 2 for mounting the assembly with the vehicle and a support arm 4 which includes mirror head 6. See page 5, lines 18-20 and page 6, lines 1-3. The support structure 2 includes a first part or shaped receptacle 38 which is secured with the vehicle. See page 7, second paragraph. The support structure also includes a support arm 4 mounting mirrors 8 and 10 which are arranged on the first part 38.

The support arm 4 also includes a second or insertable part 24 which is

engagable with and removable from the sharp receptacle or first part 38.

A locking mechanism 52 is also carried by the support structure 2. The locking mechanism functions to lock the first and second parts 38, 26 together securing the support arm and mirror to the vehicle and provides a safety measure against theft. See page 7, ¶ 3. The locking mechanism 52 is key activated via key cylinder 52a mounted on the first part 38 of the support structure and rotatable latch member 52b which engages with the second part 26 of the support structure. See page 8, ¶ 3.

The assembly includes an adjustment mechanism 22 attached to the support arm 4, the adjustment mechanism allowing the support arm to be pivoted relative to the vehicle. See page 6, ¶ 4 and page 7 ¶ 1.

The mirror assembly of the invention comprises a support structure 2 for mounting the assembly to a vehicle which structure includes a first part 38 permanently connected with the vehicle and a second part 26 releasably connected with the first part. See Figures 5a & 5b, page 7, ¶¶ 2 & 3. The second part or insertable component 26 is insertable onto the first part or clamp receptacle 38 and includes a clamping wedge 36 for clampingly locking the insertable component 26 with the clamp receptacle. See Figures 5a & 5b, page 7, ¶¶ 2 & 3.

The support arm 4 (page 5, last ¶, page 6, lines 1&2, Fig.6), which mounts at least one mirror 8, is disposed on the first part or clamp receptacle 38 of the support structure 2. The second part 26 of the support structure 2 is secured in the clamp receptacle on the support arm 4. A locking mechanism 52, which is carried by the support structure 2 on first part 38 operates to selectively lock the first and second parts 38, 26 together and to the vehicle. See page 8, ¶¶ 2 and 3 and Fig 1 & 5a. The locking

mechanism includes a key cylinder 52a mounted on the first part 38 and a rotatable latch operated by the key cylinder to selectively engage with the second part 26. See page 8, ¶ 3.

A snap-in detent arrangement 42, 38 is included with the first part 38. See page 7 ¶ 4; Page 8 ¶¶ 2&3 and Fig 2. The arrangement includes spring element 42 fixed to the first part 38 which snaps into opening 44 in the first part 38 and a corresponding opening in the second part 26. Covers 48 and 49 are provided for covering support structure 2. See page 8 ¶ 2 and Figs 2 & 5b.

The rotating latch member 52b is hook-shaped. See Fig. 5a and page 8 ¶3.

6. *Grounds of Rejection to be Reviewed:*

A. Claims 1, 18-25 are rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 11 and 14 of U.S. Patent No. 6,554,346.

B. Claims 1 and 25 are also rejected under the judicially created doctrine of obviousness-type double patenting over claim 8 of U.S. Patent No. 6,352,231.

C (1-6). Claims 1, 18, 21-25 are rejected under 35 USC 103(a) as unpatentable over Sillmann, '925.

7. *Arguments:*

A. Considering first the rejection of claims 1 and 18-25 under the judicially created doctrine of obviousness-type double patenting as unpatentable over claims 11 and 14 of U.S. Patent No. 6,554,436.

The instant application is a division of the '436 patent. During the prosecution of that patent, claims 39-46 were submitted but, in the PTO action of 1/02/2002, were held

to be directed to an invention independent or distinct from the elected invention. The examiner's position was because they "fail to include the details of a mirror housing and a mirror assembly" as called for in the elected claims.

The instant divisional application presents claims which fail to include the details of the above elected invention, and therefore, are not subject to a double rejection.

Further, it is argued that the claims of the application are patentably distinct over claims 11 and 14 of the '436 patent. Claims 11 and 14 include the following limitations "moulded component," "a main rear view mirror," "a supplemental mirror above the main mirror" and providing "a direct view of at least two dead zones." No one of these limitations appears in any of claims 1 and 18-25. Clearly, the claims are patentably distinct.

That the instant application is a divisional of the '436 patent dictates that no new matter is presented.

It is respectfully urged that the rejection set forth is improper and it is urged that the examiner's position be reversed for the above-stated reasons.

B. Considering the rejection of claims 1 and 25 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 8 of U.S. Patent No. 6,352,231.

Claim 8 includes the following limitations, "a clamping reception fixture," "a claim wedge disposed within the insertable component and slidable in a second clamping direction." Neither claim 1 nor claim 25 calls for "a clamp wedge disposed within the insertable component and slidable in a second direction." Claims 1 and 25 are directed to a locking mechanism for securing the support arm to the vehicle.

Claim 1 and dependent claim 25 are clearly patentably distinct from claim 8 of the '231 patent.

It is noted that the '231 patent and the '436 patent were filed on the same date to the same company. It is only because of the restriction requirement, which held that claims broader than those originally presented constituted a separate and distinct invention, that the instant application was filed.

For the above reasons, it is urged that the rejections of double patenting under the judicially created doctrine of obviousness be reversed.

C. Considering now the rejection of independent claim 1 and dependent claims 18, 21-25 under 35 USC 103(a) as unpatentable over Sillmann '925.

It is noted that the object of Sillmann is to provide means to arrange a second mirror relative to a first mirror. This object is totally different from that of the instant application which is to provide a clamping mechanism which makes it possible to mount or demount a mirror assembly to or from a vehicle to protect against theft.

The Sillmann reference discloses a mirror arrangement for vehicles comprising a main mirror housing 1 connected to the vehicle by way of connection 2. The mirror housing includes a removable wall 3 which is connected to an auxiliary mirror 7. The removable wall 3 is connected to the auxiliary mirror 7 by linkage 6 or by arm 33 or by apparatus 32.

As seen in Figs 1, 5 and 7, auxiliary mirror 7 may be carried by wall 3 which is mounted in frame 17 of housing 1. The head 4 or arm 33 is rigidly fixed to wall 3 and is positionable to face the rear or front of the vehicle by rotation of wall 3. See page 7, lines 1-11 and page 8, ¶ 1.

Wall 3 carries a lock mechanism 25, 26 which activates bolt 22 into and out of locking position with recess 23 of housing 1 or 17.

The structure of Sillmann operates to position a second mirror in multiple positions relative to mirror housing carrying a main mirror. This operation is totally not related to the function and object of the instant invention.

The rejection states that Sillmann discloses a rearview mirror assembly comprising a support structure 1, 2, 9, 19, 33 for mounting a mirror to a vehicle. The structure includes a first part 9 having a permanent connection to the vehicle, a second part 19 disposed on a support arm 4, 33 having a mirror. An adjustment mechanism 6, 30, 70, a key activated locking mechanism 22, 25-27 including a key cylinder 25, 26 and a rotatable latch member 22 for selectively locking the first and second parts.

The rejection then states it would have been obvious to rearrange the location of the locking mechanism to position the key cylinder and latch member on the first part of the support structure.

Further, the limitation hook-shaped latch members are said to be well-known. Also, the limitation that the snap-in dent includes a spring element is said to be well-known.

The rejection then states it would have been obvious to modify any one of the snap-in detents 2, 6, 32, 70 of Sillmann to include a spring biased ball and socket joint.

C-1. First, referencing independent claim 1, specific claim language set forth therein which is directed to structure not taught by Sillmann is here pointed to.

The claim calls for support structure 2 for mounting a mirror to a vehicle having a first part 38 having a permanent connection to the vehicle and a second part 26. The

claim further calls for a support arm 4 mounting at least one mirror to be disposed on the first part 38 and for the second part 26 to be disposed on the support arm 4.

Sillmann discloses no equivalent structure. The rejection references first part 9 (disclosed as a forward side of housing 1) to be connected to the vehicle by element 2 and a second part 19 (disclosed as an edge of wall 3) disposed on support arm 4 (disclosed as spherical head), 33 (disclosed as an arm connecting mirror 7 with wall 3). The rejection does not reference the limitation of -- a support arm disposed on said first part -- and the second part being disposed on the support arm – nor is this structure taught.

The claim further calls for a locking mechanism 52 disposed on the support structure 2 for locking together the first part 38 and second part 26 for securing the mirror to the vehicle.

The claim further calls for the locking mechanism to include a key cylinder 52 mounted on the first part 38.

Sillmann discloses a locking mechanism 25 to include the key cylinder carried by wall 3 or 19 which positions and locks wall 3 in reversible and rotated positions with housing 1 for securing the first mirror with the second mirror in reversible positions. Wall 3 or 19 is discussed in the rejection as being the second part.

C-2. Claim 18, which depends from claim 1, calls for an adjustment mechanism attached to the support arm configured to allow the support arm to be pivoted.

Sillmann discloses no such structure. There is reference only to connection 2.

C-3. Claim 21, which depends from claim 1, calls for the support structure to include a snap-in detent arrangement 42. No such arrangement is disclosed in

Sillmann.

C-4. Claim 22 further limits claim 21 by calling for the snap-in detent arrangement 42 to include a snap-in spring affixed to the first part 38 which snaps into a recess in the second part 26.

The rejection states snap-in detent including a spring element are well-known. The arrangement of Sillmann does not call for a snap-in detent nor is reference made of the desirability of such type connection whether or not such elements are known, there is no motivation to provide one with the structure of Sillmann.

C-5. Claim 23, which depends from claim 1, calls for a removable cover attachable to the first part 38.

C-6. Claim 24, which depends from claim 23, calls for a removable cover attachable to the first part 38, covering the locking mechanism and snap-in spring element.

The rejection, page 3, lines 8 & 9, states Sillmann discloses a removable cover 1. The reference disclosure refers to 1 as a housing. No mention is made of the housing being removable. Further, housing 1 is referenced as the first part in the rejection of claim 24. The locking mechanism is carried by wall 3 and is clearly not covered.

Clearly, neither the structure disclosed in the reference nor the objects of the invention set forth in the reference anticipate the structure and objectives as claimed.

For the reasons stated, it is believed that claims 1, 18, 21-25 clearly define over the reference of the rejection. Accordingly, it is respectfully requested that the rejections be reversed and the claims found to be allowable.

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8. *Appendix of Claims:*

Claim 1: A rearview mirror assembly for a vehicle, the rearview mirror assembly comprising:

 a support structure for mounting the mirror assembly to the vehicle, the support structure including a first part having a substantially permanent connection to the vehicle and a second part;

 a support arm mounting at least one mirror, disposed on said first part of the support structure and the second part of the support structure being disposed on the support arm; and

 a locking mechanism disposed on the support structure for selectively locking together the first and second parts of the support structure for securing the support arm and mirror to the vehicle, the locking mechanism including a key activated mechanism including a key cylinder mounted on the first part of the support structure and a rotatable latch member operatively connected to and rotatable via the key cylinder for selectively lockingly engaging with the second part of the support structure.

Claim 18: A rearview mirror assembly as in claim 1, further including an adjustment mechanism attached to the support arm, the adjustment mechanism configured to allow the support arm to be pivoted relative to the vehicle.

Claim 21: A rearview mirror assembly as in claim 1, wherein the support structure includes a snap-in detent arrangement.

Claim 22: A rearview mirror assembly as in claim 21, wherein the snap-in detent arrangement includes a snap-in spring element affixed to the support structure first part and which snaps into a corresponding recess in the support structure second part.

Claim 23: A rearview mirror assembly as in claim 1, further including a removable cover attachable to the support structure first part for covering the locking mechanism.

Claim 24: A rearview mirror assembly as in claim 22, further including a removable cover attachable to the support structure first part, said cover covering the locking mechanism and the snap-in spring element.

Claim 25: A rearview mirror assembly as in claim 1, wherein the latch member is hook-shaped.

9. *Evidence Appendix*

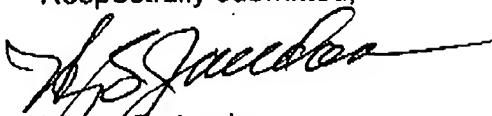
(None)

10. *Related Proceedings Appendix*

(None)

Favorable consideration is respectfully requested.

Respectfully submitted,



Henry S. Jaudon
Registration No. 34,056
McNair Law Firm, P.A.
P.O. Box 10827
Greenville, SC 29603-0827
Telephone: (864) 232-4261
Agent for the Applicant



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,830	01/22/2002	Heinrich Lang	LMX-69-CON 22946, 125	6532
7590	07/08/2008			EXAMINER

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ART UNIT	PAPER NUMBER
	DATE MAILED: 07/08/2008

McNair Law Firm, P.A.

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Non-Contingent Appeal Brief
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PAGE 19/21



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10053830	1/22/02	LANG ET AL.	LMX-69-CON

McNAIR LAW FIRM
 P O BOX 10827
 GREENVILLE, SC 29603-0827

EXAMINER

Ricky D.. Shafer

ART.UNIT PAPER

2872 20080706

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

See Attachment.

PTO-90C (Rev.04-03)

JUL 22 2008

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No.	Applicant(s)	
	10/053,830	LANG ET AL.	
	Examiner	Art Unit	
	Ricky D. Shafer	2872	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 15 April 2008 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. Other (including any explanation in support of the above items):

See Continuation Sheet.

/Ricky D. Shafer/
Primary Examiner, Art Unit 2872

Continuation Sheet (PTOL-462)**Application No.**

Item 6: The Appellant's brief does not contain a separate heading for each ground of rejection on appeal or a proper subheading for each claim argued separately as required under 37 CFR 41.37(c)(1)(Vii).

Item 7: The Appellant's brief does not contain a correct copy of the appealed claims as an appendix thereto as required under 37 CFR 41.37(c)(1)(Viii). Please be advised that the appendix include claims 2-6 and 11-17 which are not involved in the appeal.

RDS
July 06, 2008